Case: 1:06-cv-02713-JG Doc #: 20 Filed: 03/02/07 1 of 2. PageID #: 143

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF OHIO

-----

JOSEPHINE A. SPECKHART, et al., : CASE NO. 1:06-CV-2713

Plaintiffs, : JUDGE JAMES S. GWIN

vs. : OPINION AND ORDER

: [Resolving Docs. 18 & 19.]

CITY OF LORAIN, OHIO,

Defendant.

-----

## JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

On February 23, 2007, all plaintiffs filed a Notice of Voluntary Dismissal Without Prejudice pursuant to Fed. R. Civ. P. 41(a). [Doc. 18.] On February 28, 2007, Defendant City of Lorain, Ohio, filed an Objection to Plaintiffs' Notice of Voluntary Dismissal Without Prejudice. [Doc. 19.]

Defendant correctly notes that Fed. R. Civ. P. 41(a)(1) states "an action may be dismissed by the plaintiff without order of court (i) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs." Additionally, "Except as provided in paragraph (1) of this subdivision of this rule, an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper." FED. R. CIV. P. 41(a)(2).

In the instant case, Defendant filed an Answer to Plaintiff's Second Amended Complaint on January 31, 2007. [Doc. 13.] As such, Plaintiffs were not permitted to unilaterally dismiss their action without prejudice. Additionally, on November 17, 2006, Defendant filed a Motion to Dismiss Plaintiffs' Second Amended Complaint. [Doc. 5.] On December 27, 2006, Plaintiffs filed an Opposition to the Motion to Dismiss. [Doc. 6.] On January 9, 2007, Defendant filed a Reply to

Case: 1:06-cv-02713-JG Doc #: 20 Filed: 03/02/07 2 of 2. PageID #: 144

Case No. 1:06-CV-2713

Gwin, J.

Plaintiffs' Response to the Motion to Dismiss. [Doc. 8.]

The Sixth Circuit in Grover v. Eli Lilly and Co., 33 F.3d 716, 718 (1994) held that a district

court abuses its discretion "where the defendant would suffer 'plain legal prejudice' as a result of

a dismissal without prejudice...." Likewise, the Court must consider "the defendant's effort and

expense of preparation for trial, excessive delay and lack of diligence on the part of the plaintiff in

prosecuting the action, insufficient explanation for the need to take a dismissal, and whether a

motion for summary judgment has been filed by the defendant." Id.

In the instant case, Defendant has expended significant effort and expense to resolve this

litigation. Although Defendant has not filed a Motion for Summary Judgment, Defendant has filed

a Motion to Dismiss Plaintiffs' Second Amended Complaint, as well as a Reply to Plaintiffs'

Response to the Motion to Dismiss. Likewise, Plaintiffs have provided no explanation for their need

to take a dismissal. Therefore, the Court finds that Defendant would suffer "plain legal prejudice"

as a result of a dismissal without prejudice in these circumstances.

As such, the Court **DENIES** Plaintiffs' Motion for Voluntary Dismissal Without Prejudice.

Plaintiffs are ordered to notify the Court whether they wish to proceed with this case within ten days

of the filing of this order. If Plaintiffs do not wish to pursue this case, the case will be dismissed

with prejudice.

IT IS SO ORDERED.

Dated: March 2, 2007

James S. Gwin

JAMES S. GWIN

UNITED STATES DISTRICT JUDGE

-2-